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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,845	01/11/2001	John G. Spakousky	6739	9792

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EXAMINER

A, PHI DIEU TRAN

ART UNIT PAPER NUMBER

3637

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/758,845

Applicant(s)

SPAKOUSKY, JOHN S.

Examiner

Phi D A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 54-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 54-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/8/03 has been entered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1-4, 10-16 are rejected under 35 U.S.C. 102(a) as being anticipated by Nehring (5570552).

Nehring shows a discrete pre-assembled composite block having an outer wall (22), an inner wall (24), at least one of which is vertical load bearing(a structure is inherently load bearing by nature and the claim has not set forth the parameter for **load**, as claimed the load can be the weight of other panels) and made from a first material, a connective structure (42) formed

of a second material different from the first material and connected between the outer wall and the inner wall, the connective structure comprising connective struts extending between and being connected to both the outer wall and the inner wall to securely position the block, a wall connector (20) at each end of the struts to connect the strut to the outer wall and the inner wall, the connective structure being free of direct structural connection to the wall of any other adjacent block when the block is in a wall structure (figures 1, 4 shows the strut 20 sitting in the middle of the panel and is thus free of contact with the wall of other blocks), at least one wall connector having an elongated connector (parts 68, 52 and the outer solid part) for insertion in an elongated groove in one of the outer and inner wall, the elongated groove extending substantially vertically when the block is in a substantially horizontal course of blocks in a wall structure, the strut comprising a first member (the solid part), a second member (68) joined substantially at right angles to form an elongated strut, a third member (52) together with the first and second members forming a channel shaped cross section (the opening between the parts), at least one of the struts being formed from one or more of the group consisting of a plastic, metal, or a metal alloy, the connective structure being low energy conductance (plastic), at least one connective strut further comprises at least one recess for receiving a structural enhancement (46).

3. Claims 1, 2, 5-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Meendering (6293067).

Meendering shows a discrete pre-assembled composite modular block having an outer wall (10,12', 12), an inner wall (12, 12', 10), at least one of which is vertical load bearing (a structure is inherently load bearing by nature and the claim has not set forth the parameter for **load**, as claimed the load can be the weight of other panels) and made from a first material, a

connective structure (22) made of a second material different from the first material and connected between the outer wall and the inner wall, the connective structure having two or more discrete connective struts, each strut extending between and being connected to both the outer wall and the inner wall, such that the outer wall and the inner wall being securely positioned with respect to one another as opposite faces of a discrete rectangular block, each of the connective struts further comprises a wall connector at each of its ends to connect the strut to the outer wall and the inner wall, wall connector (30) being a compressible V-shaped insert-type connector (the interior forming a V-shaped) with legs compressible toward each other for frictional engagement with a groove (26) formed on an inside surface of the outer wall or the inner wall, the V-shaped further comprise at least one rib-like formation (the rib besides part 30') integrally formed on the V-shaped structure to frictionally engage an adjacent wall upon insertion in a groove, the V-shaped structure further comprises at least one compression-limiting projection (the projection at the beginning of the opening of V-shaped) on the interior of the V-shaped structure, at least one connective strut having a wall connector in an elongated groove (26) in each of the inner and outer walls and the strut being positioned substantially flush (figure 1) with the top of the outer wall and the inner wall.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nehring in view of Een (2399666).

Nehring shows all the claimed limitations except for the block comprising a partitioning panel component mounted on and cooperating with the connective structure and at preassembly placed in parallel spaced relation with the outer wall, the panel being placed closely adjacent to the outer wall so as to define a weep gap between the panel and the outer wall, the panel being an insulating panel.

Een shows a structure having a partitioning panel component (8) mounted on and cooperating with the connective structure (3) and at preassembly placed in parallel spaced relation with the outer wall(2), the panel being placed closely adjacent to the outer wall so as to define a weep gap(the unoccupied space formed by the hooks 14 of the rebars) between the panel and the outer wall, the panel being an insulating panel.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Nehring to show a partitioning panel component mounted on and cooperating with the connective structure and at preassembly placed in parallel spaced relation with the outer wall, the panel being placed closely adjacent to the outer wall so as to define a weep gap between the panel and the outer wall, the panel being an insulating panel because it would enhance the insulation of the structure as taught by Een.

Response to Amendment

1. The Declaration under 37 CFR 1.132 filed 12/8/03 is insufficient to overcome the rejection of claims 1-16, 54-56 based upon Nehring (5570552), Meendering (6293067) and Een

(2399666) as set forth in the last Office action because: applicant's explanation of "load-bearing" is insufficient to overcome the art rejection.

Applicant states that "load-bearing" is defined as being "capable of bearing a structural load" or "supporting a superimposed weight or force", examiner concurs that this is the examiner's position. As stated in the office action above, Examiner stated, "(a structure is inherently load bearing by nature and the claim has not set forth the parameter for **load**, as claimed load can be the weight of other panels) which set forth that the panels being capable of supporting weight. As also set forth in the office action, the nature of load is not claimed and thus the rejection is proper.

Applicant further states that "I would understand....the block recited in independent claim 1 ...that is sufficiently strong to support structural loads in the building construction or structural engineering sense of the word...the block would be sufficiently strong to support superimpose structural loads in addition to the loads imposed by fellow blocks located in higher block courses, examiner respectfully disagrees. First of all, a modular block is claimed as a finished structure. Secondly, the only limitation to the loads in the claim is "vertical load bearing". Thirdly, the language "to support superimpose...in addition ...in higher block courses" is not in the claim. Fourthly, if applicant has a specific weight that the material must be able to sustain, perhaps, the claim language should be more specific, for example 1000 lbs, 2000lbs...etc. As claimed, the claim language is fully satisfied by the references, as the reference structures inherently are capable of being load bearing. The argument is thus moot.

With respect to applicant argument to "Nehring or Meendering" being non-load bearing structures, examiner respectfully disagrees. Once again, there is nothing in the claim that sets

forth the specifics of the “loads” which must be met by the references. The argument is thus moot.

Response to Arguments

1. Applicant's arguments filed 12/8/03 to claims 1-16, 54-56 have been fully considered but they are not persuasive.

With respect to applicant's arguments to “load bearing” and the Declaration filed 12/8/03, the arguments are moot as set forth above.

With respect to applicant's argument to the “weep gap”, examiner further clarifies in the above action the “weep gap” as claimed. Also, there is nothing in the claim that distinguishes applicant's “weep gap” from that shown in the reference. The argument is thus moot.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different block structures..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read 'Phi Dieu Tran A', with a large, stylized loop at the end.

Phi Dieu Tran A
March 2, 2004